

Australian Capital Territory

Planning and Development (Plan Variation 387) Approval 2023

Notifiable instrument NI2023-168

made under the

Planning and Development Act 2007, s 76 (Minister's powers in relation to draft plan variations)

1 Name of instrument

This instrument is the *Planning and Development (Plan Variation 387) Approval 2023*.

2 Commencement

This instrument commences on the day after its notification day.

3 Approval of draft plan variation

(1) I approve under the *Planning and Development Act 2007*, section 76 (2) (a), plan variation 387 to the Territory Plan.

(2) In this section:

plan variation 387 to the Territory Plan means the plan variation set out in the schedule.

Mick Gentleman MLA
Minister for Planning and Land Management
28/03/2023



ACT
Government

Environment, Planning and
Sustainable Development

Schedule (See section 3)

Planning and Development Act 2007

Variation to the Territory Plan 387

Amendment to the Residential Zones
Development Code and Multi Unit
Housing Development Code for non-
standard blocks in the Residential RZ1
zone

Final variation prepared under s76 of the
Planning and Development Act 2007

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1. EXPLANATORY STATEMENT

1.1 Background

Variation 350 to the Territory Plan (V350), which commenced on 23 August 2019, was undertaken in response to concerns about inappropriate multi-unit residential redevelopment occurring on certain residential blocks in some older Canberra suburbs. This had resulted from the interpretation of the definition of ‘single dwelling block’ that enabled more dwellings than intended to be built on blocks in the Residential RZ1 Suburban and RZ2 Suburban Core zones.

The definition of ‘single dwelling block’ in the Territory Plan (which was in place prior to V350) did not apply to leases for certain blocks that originally contained two dwellings (often a primary dwelling and a flat, built in the 1960s and 1970s). The result was that some of the provisions in the Multi Unit Housing Development Code (MUHDC) in the Territory Plan, such as restricting plot ratio, block size requirements, replacement dwellings, number of dwellings in each building and restrictions on attics and basements, did not apply if multi-unit residential redevelopment was proposed on those blocks. This resulted in a built form that was not sensitive to the neighbouring blocks and the single dwelling streetscape character of the surrounding areas.

V350 addressed this issue by changing the title of the definition from ‘single dwelling block’ to ‘standard block’ and adjusting the wording in the definition to:

“Standard block means a block with one of the following characteristics: a) originally leased or used for the purpose of one or two dwellings except where the original lease explicitly permits two dwellings b) created by a consolidation of blocks, at least one of which is covered by a)”

The definition of ‘standard block’ specifically excludes blocks where the original lease explicitly permits two dwellings.

The change to the definition was intended to make sure that redevelopment proposals for these blocks complied with the relevant provisions in the MUHDC and ensure that the built form is appropriate and complementary to the streetscape.

Since then, there have been concerns raised about development proposals where multiple dwellings are proposed on blocks in RZ1 zones where the lease explicitly allowed for two dwellings. There is currently the possibility of varying the lease to change the specific allowance for two dwellings to allow for additional dwellings on the site.

The proposed developments are not captured by the definition of a 'standard block' (and therefore considered to be a non-standard block) and the current rules in the MUHDC do not limit the number of dwellings on a non-standard block in the RZ1 zone. There are currently no explicit prohibitions in the Territory Plan to prevent this type of lease variation occurring, even though it would result in a form of development inappropriate for the RZ1 zone.

The definition of 'standard block' was specifically worded to allow a block to have two dwellings if the lease allowed two dwellings. However, it was not the intent of the definition to enable a block with a lease allowing two dwellings to then have additional dwellings by varying the lease.

This variation amends the MUHDC in the Territory Plan to address this issue by adding a provision to the MUHDC to limit the number of dwellings on a non-standard block in the RZ1 zone to two if the Crown lease explicitly permits two dwellings. The reference to 'Crown lease' also makes sure that this provision captures the original lease over the land.

The variation further strengthens these controls on two dwellings by introducing a new provision in the Residential Zones Development Code to limit subdivision of a dual occupancy development on a non-standard block in the RZ1 zone to only that which is permitted under the *Unit Titles Act 2001* and only where both dwellings in the dual occupancy have been lawfully constructed.

1.2 Summary of the Proposal

The variation has been prepared to amend the Multi Unit Housing Development Code in the Territory Plan to limit the number of dwellings in the RZ1 Suburban zone to two where the lease explicitly permits two dwellings. This change will remove the potential to vary the lease for a non-standard block that is permitted by a lease to have two dwellings to have more than two dwellings.

The Residential Zones Development Code will strengthen these controls on two dwellings. A new provision limits the subdivision of a dual occupancy development on a non-standard block in the RZ1 zone to only that which is permitted under the *Unit Titles Act 2001* and only where both dwellings in the dual occupancy have been lawfully constructed.

1.3 The National Capital Plan

The *Australian Capital Territory (Planning and Land Management) Act 1988* established the National Capital Authority (NCA) with two of its functions being to prepare and administer a National Capital Plan (NCP) and to keep the NCP under constant review and to propose amendments to it when necessary.

The NCP, which was published in the Commonwealth Gazette on 21 January 1990 is required to ensure that Canberra and the Territory are planned and developed in accordance with their national significance. The Planning and Land Management Act 1988 also requires that the Territory Plan is not inconsistent with the NCP.

In accordance with section 10 of the *Australian Capital Territory (Planning and Land Management) Act 1988*, the NCP defines the planning principles and policies for Canberra and the Territory, for giving effect to the object of the NCP and sets out the general policies to be implemented throughout the Territory, including the range and nature of permitted land uses.

It also sets out the detailed conditions of planning, design and development for areas that have special significance to the National Capital known as designated areas and identifies special requirements for the development of some other areas.

1.4 Current Territory Plan Provisions

There is currently no provision in the Multi Unit Housing Development Code to limit the number of dwellings on a non-standard block in the RZ1 zone if the lease explicitly permits two dwellings.

1.5 Changes to the Territory Plan

Detailed changes to the Territory Plan are noted in section 2 of this document.

1.6 Consultation on the Draft Variation

Draft Variation 387 (DV387) was released for public comment between 30 September 2022 and 14 November 2022. A consultation notice under section 63 of the *Planning and Development Act 2007* (P&D Act) was published on the ACT Legislation Register on 30 September 2022.

A total of two written submissions were received, which included one submission from an architecture practice and one submission from a community organisation.

Main issues raised by submitters included:

- ambiguity of wording of rule 10A and it does not achieve the intentions of the draft variation
- strong opposition to the draft variation and suggestion that it should be withdrawn
- the draft variation does not encourage:
 - a compact and efficient city
 - diverse and affordable housing
- restriction on subdivision of non-standard blocks in RZ1 areas is unjustified

The above issues were considered and are detailed in a report on consultation. Changes were informed by the issues raised. The outcomes of consultation were considered by the Minister responsible for planning prior to approval of this variation.

1.7 Revisions to the Draft Variation Recommended to the Minister

No changes were made to the draft variation recommended to the Minister.

2. VARIATION

2.1 Variation to the Territory Plan

Variation to the *Residential Zones Development Code*

- | |
|------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Part D – Subdivision and consolidation, Element 10: Subdivision and consolidation, Element 10.4 Subdivision of standard blocks – RZ1, R38A |
|------------------------------------------------------------------------------------------------------------------------------------------------------|

Insert

10.4A Subdivision of blocks other than standard blocks – RZ1	
<p>R38B</p> <p>This rule applies to <i>blocks</i> other than <i>standard blocks</i> in RZ1.</p> <p>Subdivision under the <i>Planning and Development Act 2007</i> is not permitted.</p> <p><i>Subdivision</i> under the <i>Unit Titles Act 2001</i> is permitted where all of the following are met:</p> <ul style="list-style-type: none">a) It is only for <i>dual occupancy housing</i>b) Both <i>dwellings</i> in the <i>dual occupancy</i> have been lawfully constructed. <p>Note: Staged development under the <i>Unit Titles Act 2001</i> is not permitted.</p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

Variation to the *Multi Unit Housing Development Code*

- | |
|-----------------------------------------------------------------------------------------------------------------------------------|
| 2. Part A – General Controls, Element 3: Building and Site Controls, 3.6 Additional dwellings – standard blocks – RZ1, R10 |
|-----------------------------------------------------------------------------------------------------------------------------------|

Insert

3.6A Additional dwellings – blocks other than standard blocks – RZ1	
<p>R10A</p> <p>This rule applies to blocks other than <i>standard blocks</i> in RZ1 for which the crown <i>lease</i> explicitly permits 2 <i>dwellings</i>, but not to <i>blocks</i> that are intended to be used only for <i>supportive</i></p>	<p>This is a mandatory requirement. There is no applicable criterion.</p>

housing.

The maximum number of *dwellings* permitted on a *block* is 2.

Note: This rule does not apply to *blocks* for which the crown *lease* does not specify the number of *dwellings* permitted, or permits a number of *dwellings* greater than 2.

Interpretation service

ENGLISH	If you need interpreting help, telephone:
ARABIC	إذا احتجت لمساعدة في الترجمة الشفوية ، إتصل برقم الهاتف :
CHINESE	如果你需要传译员的帮助，请打电话：
CROATIAN	Ako trebate pomoć tumača telefonirajte:
GREEK	Αν χρειάζεστε διερμηνέα τηλεφωνήστε στο
ITALIAN	Se avete bisogno di un interprete, telefonate al numero:
MALTESE	Jekk għandek bżonn l-għajnuna t'interpretu, çempel:
PERSIAN	اگر به ترجمه شفاهی احتیاج دارید به این شماره تلفن کنید:
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TURKISH	Tercümana ihtiyacınız varsa lütfen telefon ediniz:
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